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RUEHFR/AMEMBASSY PARIS PRIORITY 0694
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C O N F I D E N T I A L SECTION 01 OF 04 PHNOM PENH 000264

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TAGS: [PREL](#) [PGOV](#) [KJUS](#) [EAID](#) [PHUM](#) [CB](#)
SUBJECT: KHMER ROUGE TRIBUNAL: DONORS CHART A MORE UNIFIED
COURSE

REF: A. PHNOM PENH 243
[1](#)B. PHNOM PENH 213
[1](#)C. PHNOM PENH 168

Classified By: AMBASSADOR CAROL A. RODLEY FOR REASONS 1.4 (B, D)

[1](#)1. (C) SUMMARY: In an Ambassador Level Meeting April 23, the major donors to the Extraordinary Chambers in the Courts of Cambodia (ECCC) gave provisional support to a U.S. proposal to issue a joint statement on stalled talks (Ref A) between the UN and the Royal Government of Cambodia (RGC) to establish an anti-corruption mechanism at the Khmer Rouge Tribunal. Embassy separately received unconfirmed reports that the ECCC Pre-Trial Chamber voted along international-national lines to support the prosecution of up to six additional suspects, but is waiting for the "right time" to release its decision. A proposed draft statement on the UN-RGC negotiations was circulated April 23 for coordination with capitals to coincide with an announcement by Japan that it will release \$4.17 million to support the Cambodian side of the court, which is so short of money that it cannot pay April salaries of Cambodian staff. The donors also decided to convene a meeting with the UN ResRep and UNDP; seek a briefing from the Cambodian side of the ECCC; and then call a full meeting by mid-May of the Phnom Penh-based "Friends of the ECCC," which has not met for almost a year. Donors supported a proposal by the French Ambassador to conduct a joint demarche to the UN in New York that would reflect in part the common ground found in their joint statement, but also to review what remains to be done to agree on an ECCC anti-corruption mechanism and to seek coordination between UN/OLA and other UN partners such as UNDP, which administers international donations to the Cambodian side of the court. END SUMMARY.

Donors Not As Far Apart as Presented in Press

[1](#)2. (C) Based on the perception that local media reports had distorted donors' views of the ongoing UN-RGC talks on an anti-corruption mechanism at the Khmer Rouge Tribunal (KRT), the Ambassador April 21 spoke separately to Australian Ambassador Margaret Adamson and U.K. Ambassador Andrew Mace to discern where some donors stood. Ambassador Mace said that he had been "mystified" by some of the local reports based on a Cambodian spokesperson's view that unspecified donors supported the last Cambodian proposal made on the

anti-corruption mechanism (forwarded to the Desk on April 10). The U.K. Ambassador made it clear that he did not back one side or the other and expressed views different from the Japanese and French, whose positions he characterized as being more equivocal on the corruption issue than his own government's. U.K. Ambassador Mace supported the idea of showing donor unity through some form of joint statement. (NOTE: He also stated that all of the good work of the Khmer Rouge Tribunal was not reaching as wide an audience as it should and that other issues such as national outreach and the legacy of the court for Cambodian rule of law were not being addressed. Post will send septel an appraisal of the potential significant achievements and unmet needs of the KRT. END NOTE.)

13. (C) Australian Ambassador Adamson reviewed a recent GOA announcement that the "broad progress" in preventing corruption at the KRT had prompted it to unfreeze \$456,000 to the Cambodian side of the court. She noted that these funds were always intended as bridging funds for the Cambodian side since first being announced in April 2008 when the first major donor shortfall emerged. The funds were then frozen in mid-2008 in a joint donor action when allegations of corruption against ECCC Director Sean Visoth went unanswered.

(NOTE: Sean Visoth has since departed the court. END NOTE.) Adamson said that her Foreign Minister was now convinced the RGC had proven itself to be serious enough about corruption at the court that the GOA could unfreeze the funds, notwithstanding the still unresolved negotiation on an anti-corruption mechanism. She supported the demonstration of donor solidarity through a joint statement. Ambassador

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Adamson stated that international sources at the court told her the Pre-Trial Chamber (PTC) had reached a decision on UN co-prosecutor Robert Petit's appeal to indict up to six additional suspects in a Case 3 at the KRT. She stated that the decision -- which she did not reveal -- was not being announced until the judges thought that the time was right.

A Major Development

14. (C/NF) Open Society Justice Initiative (OSJI) Monitor Heather Ryan (strictly protect source) reported April 24 that sources among the three national and two international judges in the Pre-Trial Chamber told her that the PTC had already decided in April 2-3 proceedings to support a co-prosecutor motion to charge six additional accused in the KRT. (NOTE: The KRT rules state that unless a super-majority of the five PTC judges vote to halt a prosecution, it must advance to the co-investigating judges in this civil code system. END NOTE.) Ryan cited a national judge who said they had convinced the international judges to jointly release the decision after the next round of PTC hearings in early June. Ryan said that the international judges were finally convinced that now was the wrong time to announce the decision. (COMMENT: Post could not separately confirm the nature of the PTC decision, but adjudge the source to be thorough and credible. END COMMENT.) Ryan characterized the evidence against the six as being of equal weight to the evidence against S-21 torture center head Kaing Guek Eav (aka Duch) in Case 1 and four other KR leaders in Case 2. Ryan estimated that indictments and arrests could take place within two to six months of the announcement of the PTC decision. (NOTE: She stated that her biggest concern was that the Cambodian co-investigating judge might try to delay this Case 3, but added that the UN judge could then go back to the PTC to jump start the indictments and secure the arrest orders. END NOTE.)

Donors Show More Unity on KRT Corruption Measures

15. (C) Ambassadors from Japan, France, Australia, Germany, the U.K. and U.S., along with the EU Charge, met April 23 to

review the current impasse between the UN and the RGC on the anti-corruption measures, and consider next steps including the possible release of a joint statement with the goal of demonstrating unity in their positions on the issue. The Ambassador expressed dismay with some of misleading local press stories, which had included a Cambodian spokesperson's statement that one donor supported the Cambodian position in the UN-RGC negotiation. All donors confirmed that they took a more even-handed approach to the negotiations and expressed agreement with Japanese Ambassador Katsuhiro Shinohara that they should have a common and unified stance.

¶6. (C) The Ambassador asked participants to consider three desired outcomes, including that donors: (1) understand and confirm the consensus; (2) strive to correct the public record locally regarding their positions on the UN-RGC negotiations; and (3) send a message to the UN and Cambodia that, as a group, the donors want the two sides to engage seriously and get past the one last sticking point in the negotiations. Further disruption of the discussion could prove to be a disincentive for both sides, she noted.

¶7. (C) The U.K., Australia and Germany all supported the view that it was important to counteract perceptions of donor disunity. Japan noted that both sides appeared to be sticking to certain principles, but agreed that each side should study the proposal of the other and that negotiations must continue. Donors noted some differences in their attitudes toward the two proposals, but U.K. Ambassador Andrew Mace stated that it was not helpful to align with any particular negotiating position, vice supporting an outcome acceptable to both sides. If asked, donors might offer helpful suggestions, he added. EU Charge Rafael Dochao Moreno stated that he agreed with the U.S. and U.K. and expressed a desire for a positive result before the EU-ASEM

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meeting at the end of May. The EU reiterated that it was important for whistle blowers to be protected.

New Japanese Funds for the Cambodian Side of the KRT

¶8. (C) Ambassador Shinohara announced newly received information that the Japanese government authorized the release of \$4.17 million of Japan's counterpart assistance funds to Cambodia to the Cambodian side of the ECCC. He read to the group a newly arrived cable from Tokyo: the GOJ supported the tribunal to achieve justice and support the rule of law; while the two sides had not yet reached agreement, the donors should require both sides to continue their discussions and reach agreement on an anti-corruption mechanism; however, the GOJ was concerned that the lack of budget on the Cambodian side could threaten the suspension of the court's proceedings and was thus providing this new contribution to continue the work of the court. The donors agreed that the withholding of funds from the Cambodian side was no longer a preferred option. There was some discussion of the UNDP's role as a funding vehicle for the Cambodian side and the need to engage the UN family on this issue, especially on the need for UN/OLA and UNDP to align their principles.

Next Steps

¶9. (C) The Japanese announced that they would circulate a draft joint statement later in the day, which would also include reference to the new Japanese contribution. French Ambassador Jean-Francois Desmazieres laid out a course of action that included first issuing the statement and then following soon with a demarche to the UN. In the meantime, in Phnom Penh the donors would ask for a briefing from the ECCC (most probably from acting Director Tony Kranh), followed by a briefing from the UN side of the ECCC. The assembled representatives agreed to the French-Japanese

proposal to hold a meeting of the "Friends of the ECCC" before mid-May (this is a meeting without agenda and without minutes, but includes the ECCC, UNAKRT, and the donors, including some based in Bangkok; the last meeting was held in May 2008). This renewal of the Friends was also proposed to be in the joint statement.

Draft Proposal

¶10. (C) The draft proposal circulated by Japan April 23 matches a copy circulated at the UN later that day and received by USUN. (Post is sending a copy to the Desk.) The proposal, to be released by the co-chairs of the Friends of the ECCC, carries two essential points: that the UN and RGC "must both continue to seek agreement" on the (anti-corruption) measures which include "full protection against retaliation". (COMMENT: We strongly concur with a UK addendum circulated on April 24 that more precisely defines the intended targets of prosecution as "senior leaders and those most responsible", as this reflects the UN-RGC agreement. END COMMENT.) Post agrees with a French proposal to informally inform Taksoe-Jensen before the release of the statement. We also support the UK locution regarding continued UN-RGC interaction, referring to encouraging the UN to stay engaged.

COMMENT:

¶11. (C) The donors have rallied around a position that will encourage both sides to re-think their positions. We have been frank in stating that we believe it is time for the Cambodians to make some concessions, but also believe the UN must be seen as engaged.

-- The news of additional accused is welcome and shows that the court is working as it was carefully designed to do.

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-- In the meantime, Case 1 against Duch continues and the Cambodian public is truly enthralled to see a KR torturer being held to account in court for his alleged crimes.
RODLEY